BORDEN et al. *v.* RIGBY et al.

Jan. 22, 1920.

[101 S. E. 875.]

1. **Wills (§ 567*)—Will Construed to Give Testator's Son and Partner Only One-Half of the Whole Partnership Property.**—Where the partnership agreement between a father and son, though making the son an equal partner, provided that on the father's death the firm assets should be divided one-half to the son and one-half to his mother and sisters, the father's will giving him one-half of all the property "in my own name and the name of" the partnership, and the other half to his sisters, gave him only one-half of the firm property, and not one-half thereof in addition to his share as partner.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 789.]

2. **Partnership (§ 76*)—Deed to Partners as Such Is Prima Facie Evidence That They Are Equal Partners.**—A deed conveying land to a father and son as partners under the name of R. & Son was prima facie evidence that they were equal partners.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 837.]

3. **Evidence (§ 441 (8)*)—Parol Evidence of Partnership Agreement Admissible, Though Deed Conveys Land to the Partners as Such.**—Though land was conveyed to a father and son as partners, parol proof was competent that by the partnership agreement the son's equal interest was subject to the qualification that on the father's death he was to have one-half of the assets and his mother and sisters the other half.

Burks, J., dissenting.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 684.]

Appeal from Circuit Court, Montgomery County.

Suit between Belle R. Borden and others and James Rigby, Jr., and others. From a decree in favor of Rigby, the adverse parties appeal. Reversed and remanded.

Irvine & Stuart, of Big Stone Gap, for appellants.

J. C. Noel, of Pennington Gap, for appellees.

VIRGINIA RY. & POWER CO. *v.* N. H. SLACK GROCERY CO., Inc.

Jan. 22, 1920.

[101 S. E. 878.]

1. **Trial (§ 343*)—Verdict Determines All Disputed Questions of Fact.**—Verdict for plaintiff determines in his favor all disputed questions of fact.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 619.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

2. Street Railroads (§ 114 (14)*)—Finding of Care on Part of Motortruck Driver at Crossing Warranted by Evidence.—In an action for injuries to plaintiff's motortruck in collision with a street car, evidence held sufficient to sustain verdict for plaintiff on the theory that the truck driver was not at fault, and that the street car approached the crossing recklessly without sounding gong, without proper lookout ahead, and at a greater speed than city ordinance or common prudence permitted.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 842.]

3. Street Railroads (§ 117 (29)*)—Motortruck Driver Not Negligent as Matter of Law through Failure to Look.—Where driver of motortruck, on getting to the corner of an intersecting street with a street car on it, looked both ways for an approaching car and saw nothing, but just as he got his front wheels across the track he saw the street car within two or three feet, such driver cannot be held guilty of negligence, as a matter of law, as having had a clear view up and down the street.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 841.]

4. Street Railroads (§ 99 (7)*)—Vehicles May Cross Tracks before Approaching Cars.—Vehicles may cross street car tracks in full view of approaching cars, if consistent with ordinary prudence.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 841.]

5. Street Railroads (§ 99 (16)*)—Effect of Right of Way Ordinance on Street Car and Motortruck.—A city ordinance that when two vehicles, as a motortruck and a street car, are approaching each other at an angle, the right-hand vehicle has the right of way, has application to cases only in which it is reasonably apparent that one of the two must yield to the other to avoid collision; such ordinances must be given a reasonable construction, and men with vehicles going from the left must wait for vehicles from the right where ordinary care and prudence require such stop.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 926.]

6. Street Railroads (§ 99 (16)*)—Warning by Truck Driver Approaching Crossing Sufficient.—In the absence of ordinance prescribing any particular rule, a motortruck driver approaching an intersecting street wherein ran track of the street railroad with whose car he collided gave due warning of his approach to the crossing in blowing his horn before he got to the corner.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 841, 842.]

7. Street Railroads (§ 118 (15)*)—Instruction Not Offered on Theory of Last Clear Chance.—In an action for injuries to plaintiff's motortruck in collision with defendant street railroad's car at a crossing, instruction for plaintiff that the operator of a street car has

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

no right to assume that no person will attempt to cross the track in view of a car, etc., held not offered on the theory of last clear chance.

8. Trial (§ 267 (3)*)—Modification of Instruction by Eliminating Language Explaining Doctrine of Comparative Negligence Not Error.—In an action for injuries to plaintiff's motortruck in collision at a crossing with a street car, where defendant's requested instruction informed the jury they could not find for plaintiff if guilty of any negligence at all which contributed to the collision, modification of such instruction as originally requested by striking out the words "and that his negligence [referring to the negligence of the motorman] was greater than the negligence of the driver," thus eliminating the doctrine of comparative negligence, which is not a part of the law of the state, held not erroneous, though the language might have been allowed to stand.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 709.]

9. Trial (§ 253 (8)*)—Instruction in Action for Injuries to Truck in Collision with Street Car Properly Refused as Ignoring Point for Adverse Party.—In an action for injuries to plaintiff's motortruck in collision with a street car, refusal of the railroad's requested instruction that if the jury believed the truck was driven on the track in front of a moving car less than ten feet away from the point of collision verdict must be for the railroad was proper, as the charge ignored the fact it might have been impossible for the truck driver to stop after the car was within ten feet of the point of collision, a situation possibly brought about by the excessive speed of the car.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 842.]

Error to Hustings Court of Portsmouth.

Action by N. H. Slack Grocery Company, Inc., against the Virginia Railway & Power Company. To review judgment for plaintiff, defendant brings error. Affirmed.

E. R. Williams, of Richmond, and *R. E. Miller,* of Norfolk, for plaintiff in error.

W. H. Starkey, of Norfolk, for defendant in error.

WEST *v.* WEST.

Jan. 22, 1920.

[101 S. E. 876.]

1. Divorce (§§ 213, 225, 238*)—Husband's Liability for Alimony and Attorney's Fees Not Affected by Previous Unchastity of Wife Where Marriage Consummated with Knowledge Thereof—That wife at time of marriage had had illicit relations with men other

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.